IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11598 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ZALA YASHODABEN UDAYSINH

Versus

CHAIRMAN/SECRETARY

Appearance:

1. Special Civil Application No. 11598 of 2003

MR BR PARIKH for Petitioner No. 1

MR AD OZA with Mr Dipak Dave for Respondent No.1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 24/12/2003

ORAL JUDGEMENT

Rule. Mr AD Oza with Mr Dipak Dave, learned counsel waive service of Rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 1.7.2003 passed by the Gujarat Secondary Education Board ("the Board" for short) holding the petitioner to be guilty of misconduct at the HSC Examination on 28.3.2003.

3. The Board had issued show cause notice dated 5.5.2003 which, according to the petitioner, was received by the petitioner on 12.5.2003. The petitioner's case is that because the notice was received on 12.5.2003, she hurriedly prepared a reply on 13.5.2003, but since neither the show cause notice contained the exact details of the charge against the petitioner nor was the so-called admission made by the petitioner on 28.3.2003 shown to the petitioner at the inquiry on 13.5.2003, the petitioner could not defend herself; otherwise, the petitioner would have examined Zala Arvindkumar and Rathod Ashwinbhai, who were sitting in the same examination hall and who have filed affidavits dated 1st and 4th August, 2003 respectively stating that the objectionable material was found lying on the floor below the bench of the petitioner and it was not recovered from the petitioner.

4. In the peculiar facts and circumstances of the case, it appears to the Court that the petitioner did not have a reasonable opportunity of being heard. Since the so-called admission of the petitioner was not shown to the petitioner at the inquiry held on 13.5.2003, there was no sufficient compliance with the principles of natural justice. Hence, the impugned order dated 1.7.2003 passed by the Gujarat Secondary Education Board is required to be quashed and set aside with liberty to the respondent-Board to hold a fresh inquiry on the basis of the show cause notice dated 5.5.2003. At the fresh inquiry to be held, the Disciplinary Committee of the Board shall show the material on which the Board proposes to rely and if the petitioner is desirous of leading her own evidence including examination of her witnesses, the Disciplinary Committee shall permit the petitioner to do so.

In view of the fact that the next HSC Examination is due to be held in March, 2004, it would be just and proper to direct the respondent-Board to ensure that the inquiry against the petitioner is completed as expeditiously as possible and in any case within one month from today.

In case the petitioner is exonerated at the inquiry or if it is held that cancellation of the petitioner's result for the examination held in March, 2003 would be a sufficient penalty, the respondent-Board shall also permit the petitioner to submit the examination form for the examination to be held in March, 2004.

5. The petition is allowed in the aforesaid terms. Rule is made absolute with no order as to costs.

The amount of Rs.1000 deposited by the petitioner shall be refunded by an account payee cheque.

(M.S. Shah, J.)

sundar/-